IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.92 OF 2006
IN
SUIT NO.3266 OF 2005

M/s. Ultra Distributors Pvt. Ltd. ..Plaintiffs.

Vs.

M/s. Jorden Electronics and Ors. ..Defendants

Mr.Aritosh Das with Rajiv Narula i/b M/s.Jhangiani Narula and Associates for Plaintiffs
Ms.Jyoti Ghag i/b M/s.Thakore Jariwala & Associates for Defendants

CORAM : S.A.BOBDE, J.
DATE : FEBRUARY 06/07, 2007

P.C.:

1. This Notice of Motion is taken out by the Plaintiffs inter alia for injunction restraining the defendants from dealing with in any manner or assigning, reproducing, offering for sale, distributing any video grams, cassettes, discs tapes etc. of the film "Suhaagan". The plaintiffs have also sought for appointment of the Receiver to take possession of infringing copies of video cassettes, VCDs, DVDs or any other video format of the film "Suhaagan".

2. The plaintiffs' suit is inter alia for declaration that they are exclusive, irreversible and irrevocable owners of the negative rights of the film "Suhaagan" and for injunction in that regard. It is clear from the documents to the plaint that the producer of the film i.e. defendant no.5 assigned rights to defendant no.6. Thereafter, on 22.2.1988, the defendant nos.5 and 6 assigned rights in favour of defendant no.7. The assignments are at Exhibit-A and Exhibit-B respectively. Assignment from defendant Nos.5 and 6 to defendant no.7 was at Exhibit-A.

3. The assignment in favour of plaintiffs is by defendant no.7. It is initially by assignment dated 8.10.1999 when the defendant no.7 assigned video rights in favour of the plaintiffs for a period of seven years for the territory of India including Nepal, Bhutan and Sikkim. Thereafter, on 17.8.2004, defendant no.7 granted all the rights i.e. negative rights of the said film for perpetuity and forever for the entire world/global including India.

4. It is the plaintiffs' case that therefore, all the rights are assigned to them in respect of the said film. At this juncture, the contrary claim of the defendants may be noted. According to the defendant nos.1, 2 and 3, they acquired rights from the producer i.e. defendant no.5 from 3.9.1999 for a period of 11 years. The learned counsel relies on paragraph 6 of their affidavit in support. However, apart from the statement, there is little evidence in proof thereof. The defendants have not produced any assignment deed in original nor is the copy annexed to the reply. At this stage, therefore, the defendants' claim cannot be accepted.

5. It appears that the plaintiffs made a complaint to the police about the infringing copies being sold by the defendants. The plaintiffs rely on the panchnama produced by the police in respect of the raid on 5.7.2005. The panchnama shows that VCDs of the film "Suhaagan" with the name of Raj Video the defendant no.3, were seized. The plaintiffs have also produced photo copies of the sleeves of the VCD at Exhibits 1 and 2 to the affidavit in support. It shows that the printed matter on the

slip on Exhibit-1 states that Jorden Electronics defendant no.1, have a video copyright of the film and have acquired them from the owners. Similarly, photo copy of the sleeve at Exhibit-2 shows a statement that Raj Video the defendant no.3 has obtained video CD copyright from the owners of said film. Prima facie, these appear to be infringing copies in view of the discussion above on the devolution of the rights on the plaintiffs. It is therefore, clear that prima facie, none of the defendants are entitled to produce, market or sell any video copies of the film "Suhaagan". In these circumstances, I am of the view that it is a fit case for allowing this Notice of Motion. Hence, Notice of Motion is allowed in terms of prayer clauses (a) and (b).

6. Receiver to act on the authenticated copy of this order.

[S.A.BOBDE, J.]